

INITIAL STATEMENT OF REASONS

TITLE 14 – DEPARTMENT OF FORESTRY AND FIRE PROTECTION CHAPTER 13 – STATE RESPONSIBILITY FEES

[Notice Published June 4, 2004]

Adopt all new sections to 14 CCR CHAPTER 13 § 1665 as follows:

§ 1665.1 Authority

§ 1665.2 Definitions

§ 1665.3 Determination of Eligible Parcel

§ 1665.4 Imposition of the Benefit Fee

§ 1665.5 Requests for Review and Refunds

The California Department of Forestry and Fire Protection (CDF) is proposing to adopt regulations as necessary to implement SB 1049, Chapter 741, and Statutes of 2003 and codified under Section 4139 of the Public Resources Code (PRC). Language of the proposed regulations have previously been adopted by the Department of Forestry and Fire Protection (CDF) and been endorsed by the Secretary of State as an Emergency Regulation on May 12, 2004 in accordance with Government Code Sections 11346.1 and 11349.6 of the Administrative Procedures Act.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

PRC 4139 (a) imposes an annual “State Responsibility Area” (SRA) benefit fee for parcels located whole or in part within the SRA. The annual benefit fee is \$35 for each parcel of land located within the SRA. The \$35 fees for 2003-04 and 2004-05 are to be collected as a single levy of \$70 as part of the 2004-05 local tax bill.

SRA is defined in PRC Section 4102 as those lands for which the Board of Forestry and Fire Protection has determined the State has financial responsibility for preventing and suppressing fires. Boundaries for such lands are made specific by CDF pursuant to the *State Responsibility Area Classification Key* adopted by the Board of Forestry pursuant to PRC 4125-4128. SRA lands roughly correspond to areas that are covered in timber and other vegetation, or contiguous rangelands, which provide watershed value. They do not include areas within federal ownership or within incorporated cities. SRA lands cover about 31 million acres in 56 counties and include an estimated 1.1 million parcels.

CDF is charged with implementing the SRA fee. The proposed regulations allow CDF to

implement the fee in an orderly and efficient manner over the timeframe required. They provide no functional definition of parcel; specify how CDF will utilize non-CDF staff with expertise in fee administration to implement the fee; and create a process for parcel owners to request a review and refund of the fee.

In addition, PRC 4140 (b) makes funds available, upon appropriation by the Legislature, to CDF to provide fire prevention and suppression benefits to landowners in SRA. PRC 4140 (d) allows CDF to borrow against anticipated revenues from the fee to meet cash flow needs. For these sections to operate as envisioned, CDF must be able to collect the fee. Hence, adoption of the proposed regulations is not only necessary to the orderly and efficient collection of the fee but to the provision of operating funds to the Department for fire prevention and suppression.

The fee is expected to generate between \$60 million to \$100 million dollars and is intended for use by CDF to repay funds borrowed in anticipation of revenues to be collected from the fee or to be authorized for use as operating funds. If the fee cannot be collected, CDF would need to find other sources of revenue or to cut fire protection forces.

At the high end, the amount of \$100 million is about 13% of CDF's base fire protection forces. These forces include fire fighters, bulldozers, helicopters, air-tankers and other resources used to control fires in the SRA. In the event that there is a significant reduction in CDF's staffing pattern, it can be expected that the number of smaller fires that escape and become large damaging fires will increase. Increased loss of life, property, and damage to natural resources are also expected as a consequence of reduced response capacity.

The risk of any substantially reduced staffing has extra significance in 2004 because CDF believes that there is a strong possibility that the risk of wildfire is above normal for both Northern and Southern California. Meteorological events and fuel conditions have combined to create substantial and earlier fire threats in major parts of both regions.

The extent of the risk can be seen in the values at stake in areas prone to wildfire. Roughly three-quarters of California's timberlands and two-thirds of its woodlands are in conditions that support High or Extreme Fire Threat. Life and property are also at risk, especially in the Wildland Urban Interface (WUI). WUI is a term generally applied to areas of human development exposed to threats from wildfire. According to the Department's Fire and Resource Assessment Program, a total of 7.8 million acres meet WUI criteria. Of these acres, about 70% are exposed to High, Very High, or Extreme Fire Threat.

SPECIFIC PURPOSE OF THE REGULATION

Section§ 1665.1 Authority: The purpose of this section is to identify that the regulation is intended to lay out procedures to implement SRA fees.

Section 1665.2 Definitions: This section provides definitions for terms used in the

regulation.

Subsection § 1665.2 (a) “Parcel”: This section provides a definition of “parcel” as real property delineated by an assessor parcel number.

Subsection § 1665.2 (b) “Designated Fee Administrator”: PRC Section 4139 (g) allows the Department to contract for services related to establishment of the fee collection process. The creation of a “Designated Fee Administrator” indicates how this will occur.

Subsection § 1665.2 (c) “State Responsibility Area”: The fee is to be administered in State Responsibility Areas (SRA). This subsection makes reference to the process by which SRA is determined and indicates the location of information regarding boundaries.

Subsection § 1665.2 (d) “Benefit Fee”: This simply standardizes the term used to reflect the fire protection benefit fee imposed by PRC Section 4139 (a).

1665.3. Determination of Eligible Parcel: This section indicates that the determination of eligible parcels will be done statewide by the Department’s Designated Fee Administrator consistent with the definition of “parcel” and within the requirements of PRC 4139 (a).

Section § 1665.4. Imposition of the Benefit Fee: This section further clarifies parcels that are eligible for the fee.

Subsections (a) and (b): PRC Section 4139 forbids imposition of the SRA fee on parcels that are exempt from property taxes and on parcels owned by a public agency and located within the boundaries of a public agency. The subsection repeats these exclusions for the sake of clarity.

Subsection (c): This subsection removes parcels less than \$5000 in value. This standardizes an exclusion allowed by Section 115.20 of the Revenue and Taxation Code across all counties.

Subsection (d): This subsection clarifies that the fee applies only to real property.

Subsection (e) “Parcel” as defined by proposed 14 CCR 1665.2 (a) uses real property as delineated by an Assessor Parcel Number. Consistent with common assessment engineering practices, the subsection specifies that the fee should not be imposed on parcels created by the assessor for administrative purposes, such as revenue boundaries or changes in map book pages.

Section § 1665.5. Requests for Review and Refunds: This section indicates the process by which parcel owners may request review of their fees and sets in place a process to respond.

Subsection (a) This subsection specifies that a parcel owner who believes that an error has been made may request review with the Designated Fee Administrator.

Subsection (b) This subsection specifies the time period for review, makes such requests consistent with Revenue Taxation Code Section 5097 (a) (1), and provides a contact point for a request to review the fee. It also specifies that property owners must supply information supporting their review requests and allows the Designated Fee Administrator to request additional information as needed to facilitate the review.

Subsection (c) This subsection establishes a timeframe within which the Designated Fee Administrator completes a review and provides notice to the property owner.

Subsection (d) This subsection describes how the Designated Fee Administrator will handle fee modifications.

Subsection (e) This subsection describes how property owners may appeal the decision of the Designated Fee Administrator to CDF. Timeframes and notice to property owner requirements are set.

Subsection (f) This subsection describes how CDF will handle fee modifications. The section also indicates that the decision by the Department constitutes a final administrative action.

NECESSITY

Subsection § 1665.1: Authority: Currently Chapter 13 does not exist in Title 14 of the California Code of Regulations. CDF will create this Chapter to implement the SRA fees. The need for this subsection is to identify the authority and its use to define procedures to implement SRA fees.

Subsection § 1665.2 Definitions: These definitions are needed to facilitate implementation of the SRA fee.

Subsection (a) “Parcel”: Definition of “parcel” is necessary to implement the fee. Failure to clarify the meaning of “parcel” will potentially result in many taxpayer questions and possible payment of unnecessary fees. During the development of the regulation, many questions were asked if the fee applied to such interests as grazing, timber, or mineral rights.

PRC Section 4139 requires that CDF notify each county treasurer by June 30, 2004 of the amount it anticipates the owners of parcels to remit for the 2003-04 fiscal year. For this to occur, the owners of eligible parcels must be delineated. SB 1049 applies the SRA fee to each “parcel of land.” However, there is no definition of either “parcel of land” or “parcel.” While SB 1049 does not define these terms, Section 4139 (e) directs that each county collect the fees in the same manner and

at the same time as secured property taxes. Collection of local property taxes is based on assessor parcel numbers (APN) created by county assessors. Hence the proposed rule defines “parcel” as real property defined by an assessor parcel number (APN).

Subsection (b) “Designated Fee Administrator”: This subsection is necessary to indicate the entity engaged by CDF to administer the fee under PRC Section 4139 (g).

Subsection (c) “State Responsibility Area”: This subsection is needed to make it what is meant by State Responsibility Areas. This subsection makes reference to the process by which SRA is determined and indicates the location of information regarding boundaries.

Subsection (d) “Benefit Fee”: This subsection is needed to standardizes the term used within the regulation to reflect the fire protection benefit fee imposed by PRC Section 4139 (a)

1665.3 Determination of Eligible Parcel: This section is necessary to indicate that CDF will use a Designated Fee Administrator to administer the fee under PRC Section 4139 (g). This is necessary because CDF does not have the expertise to develop lists of eligible parcels and to otherwise administer benefit fees on the scale of SRA lands. However, there are private firms that have such skills and CDF has entered into a contract with such a firm to provide services. Examples of the services provided include determination of eligible parcels and forwarding lists of eligible parcels and fees to auditor/tax collectors for collection. The regulation will lead to consistent and experienced administration of the fee across the state.

1665.4 This section further clarifies parcels that are eligible for the fee.

Subsections (a) and (b) This subsection repeats language in Section 4139 of the Public Resources Code that forbids imposition of the SRA fee on parcels that are exempt from property taxes and on parcels owned by a public agency and located within the boundaries of a public agency. In preparation of the regulation, the Department frequently encountered questions about which parcels were subject to the fee. This is especially true in the case of the exclusion of parcels exempt from property taxes, as this category of ownership is typically assessed benefit fees. The Department believes that repetition of the statutory exclusions is necessary for convenience and clarity.

Subsection (c) Section 155.20 of the Revenue and Taxation Code allows for the exclusion of parcels below a minimum value of \$5000. Currently counties vary greatly in exclusion that they allow, from none to \$5000. The purpose of this subsection is to standardize the exemption as applied to the SRA fee across all counties with SRA.

Subsection (d) During the development of the regulation, many questions were asked if the fee applied to such interests as grazing, timber, or mineral rights. These are not “parcels of land” or “parcels” as defined by proposed 14 CCR 1665.2(a). Subsection (d) is thus needed to make it clear that the fee does not apply to parcels other than real property.

Subsection (e) APNs are administrative creations of county assessors used to implement the local property tax framework. This subsection is needed to handle the fact that, consistent with typical benefit assessment engineering practices, more than one assessor parcel number may constitute a single parcel where a county assessor for administrative reasons has created contiguous parcels owned by an identical owner. The Designated Fee Administrator will handle such parcels as a single parcel for purposes of fee determination. Examples are APNs created for tax rate area boundaries, separation by roads, location on different map book pages, or reflecting splits by the State Board of Equalization mapping crews for rivers, roads, or railroad tracks.

Section § 1665.5 Requests for Review and Refunds: The section is necessary to provide and clarify the process by which parcel owners may request a review and refund of fees.

Subsection (a) This subsection is needed to indicate that a parcel owner who believes that an error has been made may request review with the Designated Fee Administrator.

Subsection (b) This subsection is needed to specify the time period for review, make such requests consistent with Revenue Taxation Code Section 5097 (a) (1), and provide a contact point for a request to review the fee.

This subsection also specifies that property owners must provide all information on which the request is made and allows the Designated Fee Administrator to request additional information to facilitate review of a request. By reference, this information can include information from the property pursuant to Section 53087.4 of the Government Code. The subsection is necessary to indicate to property owners that they must provide documentation for the basis of any request that their fees be altered. It is also necessary to give the Designated Fee Administrator the ability to have the property owner provide additional information if the Administrator cannot make a determination from the initial material supplied by the landowner. This creates the opportunity for an interchange of information between the Designated Fee Administrator and the property owner and improves the chances of a thorough review.

Subsection (c) This subsection is needed to establish a timeframe within which the Designated Fee Administrator completes a review and provides notice to the property owner. Absent a timeframe and notice a property owner would have no idea of how long it would take for a review or of any decision.

Subsection (d) This subsection is needed to describe how the Designated Fee Administrator will handle fee modifications.

Subsection (e) This subsection is needed to describe how property owners may appeal the decision of the Designated Fee Administrator to CDF. Timeframes and notice to property owner requirements are set. Absent a timeframe and notice a property owner would have no idea of how long it would take for a review or of any decision.

Subsection (f) This subsection is needed to describe how CDF will handle fee modifications. The section also indicates that the decision by the Department constitutes a final administrative action. This is necessary to make it clear that beyond this point property owners will need to seek remedies outside of CDF.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES

CDF has considered alternatives to the regulation proposed in three areas: the definition of “parcel,” the use of a Designated Fee Administrator, and design of the system for requesting review and refunds.

Definition of “parcel”: The definition of parcel is the primary area in which alternatives might change the design of implementation. In PRC 4139, the Legislature did not define “parcel” beyond indicating that it should be a parcel of land and that certain kinds of parcel of land are to be excluded. In PRC 4138 (c) the Legislature indicates that its intent is that “the presence of homes and other structures on a given “parcel,” and the size of the parcel, constitute a reasonable relationship to fire prevention and suppression benefits received.” However, this does not provide further definition of a “parcel.”

CDF considered alternative definitions of parcel, including legally described rather than assessor parcel number (APN). CDF also considered use of tax rate area lines to administer the program. However, the common definition of “parcel” used by assessors to identify parcels is the Assessor Parcel Number (APN).

Based on the requirements of PRC 4139 (f) that “all laws relating to the levy, collection and enforcement of county taxes apply” to the implementation of the SRA fee and on the advice of state and local officials, CDF chose to use APNs as the most practical and economical method of administering the program. Consistent with practices of other jurisdictions, CDF does make provision to adjust for parcels that have been created for administrative purposes or are of low value.

Use of a Designated Fee Administrator: CDF potentially could try to collect assessor parcel data and determine which parcels were eligible for the fee. However, CDF has neither the expertise nor staff to carry out such operations. For this reason, CDF has chosen to use an entity with such expertise and staff, referenced in the regulation as a Designated Fee Administrator.

Design of the System for Requesting Review and Refunds

Procedures and time deadlines for requesting such actions are largely spelled out in Section 5097 of the Revenue and Taxation Code. The ability of landowners to adjust bills on a parcel basis is covered by Section 53087.4 of the Government Code. PRC 4139 (f) provides that “all laws relating to the levy, collection and enforcement of county taxes apply” to the implementation of the SRA fee. Any alternatives must account for these code sections. Subject to this limitation, CDF worked with local officials in designing the process.

CDF considered delegating all the review to the Designated Fee Administrator. While faster, this option would not provide a second level of review for the parcel owners to the agency actually charged with implementing the fee. For this reason, the final administrative point of decision lies with CDF. While varying timeframes are possible, CDF chose time deadlines that both it and the Designated Fee Administrator believed were reasonable. Timeframes were established based on what the contractor and CDF believed could be met. Paperwork requirements are based on those necessary to establish and maintain a record and enable a refund, while at the same time minimizing information that flows unnecessarily to local government.

CDF concluded that no alternative would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

CDF has not identified any adverse environmental effects as a result of the proposed rules.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

There is one kind of economic impact that comes simply from passage of PRC 4139 and not primarily from the proposed rule. Under PRC 4139 (a), any business that owns an eligible parcel will have to pay the fee of \$70.00 per eligible parcel. Added fees to businesses under PRC 4139, whether just the SRA fee alone or in combination with other new unrelated fees, could have some adverse economic impact on businesses holding many parcels of land. Typical businesses affected are likely those holding parcels for timber harvesting, cattle grazing or agricultural purposes. The exact impact of the fee itself on businesses will be dependant on the number of eligible parcels they hold. Large industrial or large ranches owners with many eligible parcels would have the largest total fee amount assessed, while owners of individual parcels would experience the smallest dollar impact.

The second kind of economic impact may be related to the proposed rule itself. By defining “parcel” as real property with an APN, CDF is clarifying the standard to

determine which parcels are eligible. This could affect the number of parcel owners who must pay the fee and perhaps the total fee that they will need to pay.

The Legislature did not define “parcel of land” or “parcel.” While SB 1049 does not define these terms, Section 4139 (e) directs that each county collect the fees in the same manner and at the same time as secured property taxes. Collection of local property taxes is based on assessor parcel numbers (APN) created by county assessors. Hence the proposed rule defines “parcel” as real property defined by an assessor parcel number (APN).

Not all APNs will be counted. Beyond exclusions contained in PRC 4139 (a), The proposed rule eliminates APNs drawn for some administrative reasons or that are of low value. Dependent on the county assessor, businesses may also seek to have parcels combined and a lower total fee may result. Finally, under the proposed regulation, owners of parcels have a process that they may seek review and refund of fees.

The Legislature did include intent language that indicated in PRC 4138 “that the presence of homes and other structures on a given parcel, and the size of the parcel, constitute a reasonable relationship to fire prevention and suppression benefits received.” However, they did not indicate how CDF was to implement the fee whether by further definition of “parcel” or other language to carry out this intent statement.

A third possible economic impact could result if CDF cannot implement the fee. In the event the fee is not collected and CDF reduces its fire protection forces significantly, the number of smaller fires that escape and become larger fires reasonably can be expected to occur. Increased loss of life, property, and damage to natural resources can also be expected. This could cause increased costs to businesses and private persons.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

CDF considered the following alternatives to lessen adverse impact on small business:

Alternative 1: Define “parcel” by some other means than real property indicated by an APN. CDF discussed this with local officials, but rejected other approaches as less efficient or not possible given the lack of legislative definition of “parcel of land” or “parcel.” Section 53087.4 of the Government Code provides a means to landowners to adjust fees when they are administered on a per parcel basis.

Alternative 2: Provide for removal of APNs where they have been drawn for administrative reasons, such as the end of map book pages or revenue lines. CDF used this alternative.

Alternative 3: Provide for removal of APNs at up to \$5000 in value under Revenue and Taxation Code 155.20. CDF used this alternative.

Alternative 4: Provide for more than one level of review of parcel fees. CDF used this alternative.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

CDF relied on the following technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation as referenced in this *Statement of Reasons*:

1. California Department of Forestry and Fire Protection. March and April 2004. Northern and Southern Regional Reports. Board of Forestry Meeting.
2. National Weather Service. May 2004. Climate Prediction Center.
<http://www.cpc.ncep.noaa.gov/>.
3. California Department of Forestry and Fire Protection. Fiscal Year 2003 and 2004. CDF Blue Book: Table Of Staffing Standards And Authorities For: * General Fund Suppression Forces; * Special Fund Suppression Forces; * Conservation Camps.
4. California Department of Forestry and Fire Protection. 2003 and 2004. Wildfire Activity Statistics. <http://cdfweb/FireProtection/EARSInternetReports/LF.xls> and <http://www.fire.ca.gov/FireEmergencyResponse/2003FireSeason/2003fireseasonstats.asp>
5. California Department of Forestry and Fire Protection, Fire and Resource Assessment Program (FRAP). Wildfire Risks to Assets. October 2003.
http://frap.cdf.ca.gov/assessment2003/Chapter3_Quality/wildfirerisk1.pdf
6. California Department of Forestry and Fire Protection. SRA Classification Key.
http://www.fire.ca.gov/php/fire_er_sra.php.

Pursuant to Government Code § 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; CDF has directed the staff to review the Code of Federal Regulations. The staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.